

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 13-14635-P

WILLIAM GREG THOMAS,

Petitioner-Appellant,

versus

ATTORNEY GENERAL, STATE OF FLORIDA,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: ED CARNES, Chief Judge, MARCUS and WILLIAM PRYOR, Circuit Judges.

BY THE COURT:

William Greg Thomas's motion to determine jurisdiction is GRANTED to the extent that we determine that we retained jurisdiction over the instant appeal when we issued a limited remand to the district court in 2015. Mr. Thomas's alternative request that we relinquish jurisdiction to the district court is DENIED.

In our previous opinion, *Thomas v. Attorney General, State of Florida*, 795 F.3d 1286 (11th Cir. 2015), we *sua sponte* remanded this case to the district court to make additional and detailed findings of fact concerning Mr. Thomas's claim to equitable tolling, without reaching the merits of his 28 U.S.C. § 2254 petition. In that opinion, we remanded "for the limited purpose" of allowing the district court to address equitable tolling once again to aid in our review

of that issue, and we provided specific and narrow instructions about the factual findings to make, and cases to address, on remand, without reaching any of the issues raised by Mr. Thomas's appeal and without vacating the district court's dismissal of his petition with prejudice. *See Thomas*, 795 F.3d at 1291-97, 1297 n.3. Not only did the language of the opinion and the nature of its disposition make clear that jurisdiction was retained, our *nunc pro tunc* correction of the mandate -- which merely clarified that the mandate applied only to the state's cross-appeal -- further underscores that we retained jurisdiction over this appeal.

As for Mr. Thomas's alternative request -- that we relinquish jurisdiction for the district court to resolve the two new habeas claims Mr. Thomas sought to raise after we issued our limited remand -- we decline to do so. Contrary to Mr. Thomas's arguments, relinquishing jurisdiction will not avoid piecemeal litigation and promote judicial economy. Mr. Thomas has attempted to raise his new claims through two separate post-judgment procedural mechanisms: a motion to amend and the filing of a separate habeas petition under a new case number. Neither mechanism implicates the traditional notion of piecemeal appeals, which concerns multiple appeals of claims and issues that arise *before* judgment in a *single* case. *See Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981). Nor would it promote either finality or judicial economy to relinquish jurisdiction over an appeal that is now ready to be briefed and decided so that new post-judgment issues may be litigated -- especially since the instant appeal has been pending for nearly five years, and Mr. Thomas has reported that his new claims are still being exhausted in state court.

Moreover, relinquishing jurisdiction to the district court at this time is not advisable because our decision in the instant appeal will determine the proper standard to govern Mr. Thomas's attempt to amend his petition to add new claims. At present, the district court's

judgment denying Mr. Thomas's initial petition remains undisturbed, and so he may not amend his pleadings under Federal Rule of Civil Procedure 15. *See* 28 U.S.C. § 2242; Fed. R. Civ. P. 15(a); *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010); *Nyland v. Moore*, 216 F.3d 1264, 1266 (11th Cir. 2000). Instead, he may only add new claims pursuant to the authority in Federal Rule of Civil Procedure 60, and any new claim will be treated as a second or successive application. *See U.S. ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1361 n.22 (11th Cir. 2006); *Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005). But if we vacate the district court's judgment in this appeal and remand for further proceedings, then (assuming our ruling does not moot the new claims) Mr. Thomas's attempt to amend his petition would be governed by Rule 15, as his original petition proceedings would again be ongoing. Thus, the outcome of this appeal will provide a clear standard to govern any future amendment seeking to add new claims.

We therefore conclude that we retained jurisdiction over this appeal after issuing our 2015 opinion, and we choose not to relinquish jurisdiction to the district court. This appeal MAY PROCEED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
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David J. Smith
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September 25, 2018

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District Court Docket No: 3:03-cv-00237-TJC-TEM

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

Appellant's brief is due 30 days from the date of the enclosed order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: David L. Thomas
Phone #: (404) 335-6171

MOT-2 Notice of Court Action